

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE Nos. 19 & 28 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

and

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH TAX

Versus

GORDHANBHAI JETHABHAI PATEL

Appearance:

MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/09/2001

COMMON JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

At the instance of the Commissioner of Wealth Tax, following common question of law has been referred for the opinion of this Court in respect of the assessment years 1978-79, 1979-80 and 1980-81

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the deposit in the name of Gordhanbhai Jethabhai Zaverbhai (HUF) is not includible in the wealth of the assessee ?"

2 The Wealth Tax Officer for the reasons given in income tax proceedings in assessee's own case held that the deposit in the name of Gordhanbhai Jethabhai Zaverbhai (HUF) had to be taxed in the hands of the individual as asset belonging to individual. The Tribunal has made reference only because the reference in income tax proceedings was pending before this Court. However, in assessee's own case the Supreme Court has held that whether deposit is made by the HUF or not would be a question of fact and provision of Section 40(b) of the Income Tax Act, 1961 cannot be invoked. In light of this position there is no question of holding that the deposit in question standing in the name of the HUF could be treated as an asset liable to be taxed as wealth of the individual assessee.

3 We, therefore, answer question referred to us in both these references in the affirmative i.e. in favour of the assessee and against the revenue.

4 The references are disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah, J) (D.A.Mehta, J)

m.m.bhatt